

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHARLES L. LUDWIG, et al.,

Plaintiffs,

v.

ORDER
05-CV-353A

THE CITY OF JAMESTOWN, NEW YORK,
et al.,

Defendants.

On May 6, 2008, in open court and in the presence of counsel, the Court scheduled a trial in this case for August 12, 2008, and a final pretrial conference for August 7, 2008. At that time, the Court also granted defendants' motion to compel discovery, which was filed on January 23, 2008. On May 12, 2008, the Court issued a Pretrial Order, reflecting the schedule for the trial and the final pretrial conference, and requiring that all pretrial submissions, as provided for therein, be filed by July 31, 2008. Also on May 12, 2008, the Court issued an Order Compelling Discovery, memorializing its granting of defendants' motion to compel.

In contravention of the Court's May 12, 2008 Pretrial Order, plaintiffs failed to file any of the required pretrial submissions until August 7, 2008, the day of the scheduled pretrial conference. In addition, on July 31, 2008, defendants filed a motion *in limine* to exclude evidence based on plaintiffs' alleged failure to comply

with the Court's May 12, 2008 Order Compelling Discovery. In light of this situation, the Court found it impossible to proceed with the final pretrial conference, despite the fact that defendants' counsel had traveled some distance from Jamestown, New York to attend. As a result, the Court cancelled the conference and adjourned the trial.

On August 14, 2008, the Court issued an Order requiring the plaintiffs to show cause, in writing, as to why the case should not be dismissed or the plaintiffs otherwise sanctioned for their failure to comply with the Court's Orders.. Plaintiffs filed an affidavit on September 23, 2008, asking that the case not be dismissed. Defendants filed a response thereto on October 7, 2008. Oral argument was held on October 29, 2008.

The Court shall not dismiss the case because such a sanction would be too harsh under the facts and circumstances present here. However, the Court finds that a sanction is appropriate.

Rule 16(f) provides, in pertinent part that

if a party or its attorney. . . is substantially unprepared to participate . . . in [a pretrial] conference; or . . . fails to obey a scheduling or other pretrial order . . . , the court **must** order the party, its attorney, or both to pay the reasonable expenses--including attorney's fees--incurred because of any noncompliance with this rule, **unless** the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

(emphasis added).

Here, plaintiffs failed to obey the Court's May 12, 2008 Pretrial Order, requiring all pretrial submissions to be filed by July 31, 2008. Plaintiffs' pretrial submissions were not filed until August 7, 2008, the day of the final pretrial conference, which caused the cancellation of the conference. Plaintiffs never asked the Court or defendants for an extension. Plaintiffs' failure to comply with the May 12, 2008 Pretrial Order caused defendants' counsel to make a wasted trip from Jamestown to Buffalo. Plaintiffs have failed to show that their noncompliance was substantially justified or that there are other circumstances that would make an award of expenses unjust. Accordingly, the Court hereby orders plaintiffs and their counsel to pay the reasonable expenses, including attorney's fees, associated with defendant's counsel's trip to Buffalo on August 7, 2008. Defendant's counsel shall file an affidavit itemizing such expenses by December 1, 2008. Plaintiffs and their counsel shall pay such expenses by December 31, 2008.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: November 26, 2008